Tax Alert

12 June 2009

Draft 2009 Taxation Laws Amendment Bills

On 11 June 2009 SARS and National Treasury briefed Parliament's Standing Committee on Finance on draft versions of the two Amendment Bills released for public comment on 1 June 2009. Taxpayers are requested to submit written representations by 26 June to the Standing Committee and to National Treasury. In respect of early submissions (received by 18 June), the Standing Committee will also hear oral presentations on 24 June 2009.

We present below a summary of some of the main issues proposed in the draft Bills. Please note that these should all be viewed as "proposals" as opposed to final amendments.

Administration

Provisional Tax

In respect of the 2nd provisional tax payments, there is a proposal to alleviate the compliance burden for smaller taxpayers, i.e. simplify the calculation whilst still avoiding the 20% penalty. The exact details of the calculation mechanism and which category of taxpayer will benefit from this relief will be determined by the SARS Commissioner.

Also, public benefit organisations, clubs, etc will be remain (indefinitely) outside the provisional tax system.

Settlements

Clarification that settlements can only be initiated after assessment

Tax payments subject to objection

Confirmation that tax liabilities may remain payable despite objections having been raised, and a proposal that SARS will be liable for interest if the objection is subsequently upheld in favour of the taxpayer.

Compound interest on unpaid taxes

Proposal to authorise the SARS Commissioner to institute a system of daily compounding of interest for certain types of unpaid taxes.

Environmental incentives

CERs

The disposal of CERs (certified emission reductions) will be exempt from Normal Tax. For VAT purposes, CERs will be considered to be "zero-rated" services.

Energy efficiency

Proposal for a notional allowance to offset savings resulting from energy efficiency initiatives. This is a formula that is intended to effectively ensure that such savings remain tax free.

Company dividends

Conduit rule for CISs

Proposal to treat CISs (collective investment schemes) akin to trusts so that income retains its nature if on-declared by the CIS within a year. (A CIS will no longer be treated as a "company".)

Conversion from STC to Dividends Tax (DT)

- Date: The change-over date is still uncertain, with no further elaboration on previous announcements that an effective date in "late 2010" is expected.
- Pre-sale purchaser-funded dividend stripping: Proposal to treat dividends as CGT proceeds or as gross income, if dividends declared in the last 2 years before the sale of the shares were effectively funded by the new purchaser.
- Dual-listed foreign companies: Proposal that dividends paid by dual-listed foreign companies should also be subject to DT, to the extent that the dividends accrue to SA-resident shareholders.
- Life Insurance: Dividends received by insurance companies and allocated to their "individual policyholder fund" must be subjected to DT by the insurance company itself.
- Withholding obligations: Further refinements as regards the withholding obligations attached to certificated (paper) as opposed to uncertificated (electronic) shares. Companies will also be required to notify shareholders of the "dividend" content (as compared to the "capital distribution" content) of distributions made.
- Capitalisation issues: The issue of capitalisation shares will only continue to be a non-dividend where the cap-issue does not result in a change in proportionate equity share interests. Elective cap-issues (where shareholders can choose between cash and shares) will automatically be deemed to be a dividend.
- Deemed dividends: In anticipation of the termination of s64C ITA (as part of the overall termination of STC) a new set of deemed dividend provisions is inserted into to the DT rules. The main targets will be loans, transfer pricing and thin capitalisation adjustments, companies ceasing to be SA-resident, and hybrid instrument adjustments. Similar exemptions to those in the current s64C will be repeated in the new rules (e.g. if a loan is subject to appropriate interest), although the so-called "group" exemptions are dispensed with since most dividends paid to SA-companies will in any event be exempt from DT.

Capital expenditure

Conversion of Telecommunications Licences

Given that new telecommunications licences will be comprehensive (as opposed to specifically fixed-line, or specifically cellular, etc.), the conversion from the old licences will be treated as a roll-over event, i.e. not subject to immediate CGT or recoupment taxation.

Submarine cable – Joint ownership interests

Proposal to allow a depreciation allowance on joint ownership interests (or similar rights-of-use), in respect of international submarine telecommunication cables.

Improvements on state-owned land

Taxpayers who lease land from the government may be allowed to deduct (i.e. write off over at least 20 years) the cost of improvements made to such property.

Oil & Gas

Relaxation in the requirements in the 10th Schedule ITA, to now permit companies with mixed trades to also qualify for incentives in respect of the oil/gas exploration or production component of their businesses.

Venture Capital Companies

The VCC rules in s12J ITA will be revised.

Employment

Travel Allowances

Proposed deletion of the "deemed km" rule, which currently allows business travellers to simply record the overall annual total km travelled and then deem the first 18,000km to be "private". Henceforth (from 1-Mar-2010) only logbook records of actual business travel will be accepted.

Also, the "remuneration" component of travel allowances will be increased (from the current 60%) to 80%.

Medical expenditure

Employer contributions to medical funds will be fully taxed as fringe benefits, but this should be offset by the deduction in the hands of the employee.

In addition, lump sum medical payments in respect of obligations to retired employees may be fully deductible.

Retirement funds

Further changes are proposed as regards the tax rates applicable to withdrawals, payouts to minor beneficiaries, certain government pension benefits accrued before 1998, and fund surpluses paid to employers.

Learnership allowances

The rules in s12H are revised in an attempt to simplify their application.

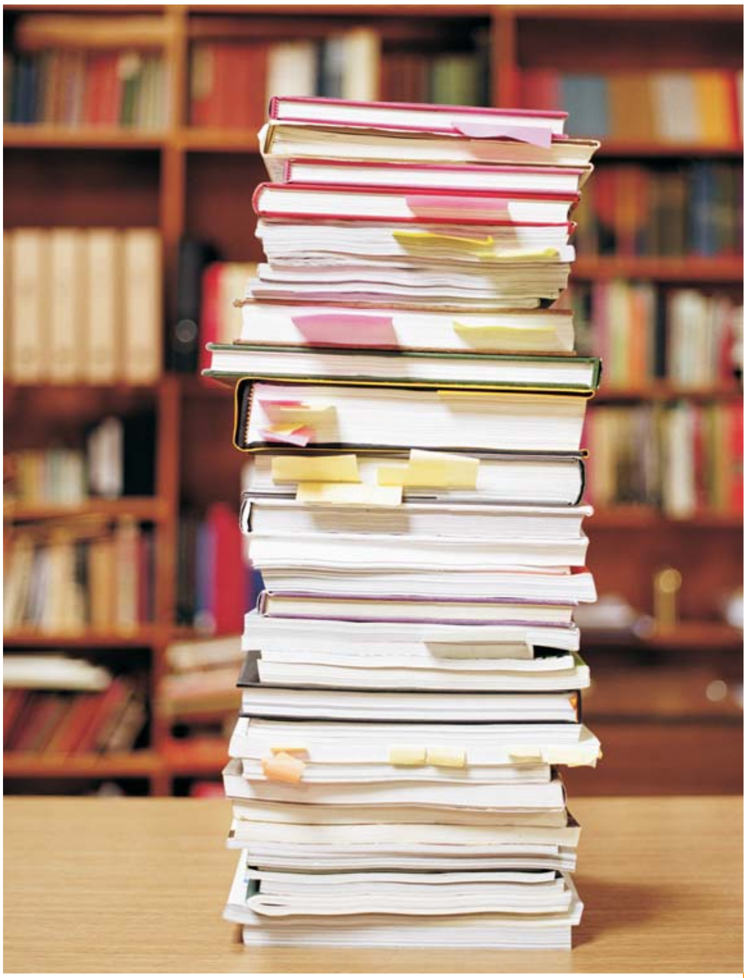
Employees' tax reconciliations

SARS may be authorised to require employers to furnish employees' tax reconciliations more than once per year.

International

CFC rulings

Proposal to streamline the exemption rules, in order to remove the need for the current rulings regime in s9D(10). The exemption criteria (specifically, on foreign business establishments, and high-taxed CFC income) will be clarified further and be applied automatically –hence obviating the need for rulings.



Sale of primary residence – CGT relief

CGT exclusion on sale of a principal residence is to be extended to sales where the proceeds do not exceed R2m.

Recreational clubs –Retrospective exemption

Despite the fact that the some clubs might have missed the deadline for apply for exempt status, the SARS Commissioner may be given the authority to retrospectively approve such clubs if they were in any event substantially compliant with the exemption requirements.

Estate Duty

In the case of married persons, the R3.5m abatement will be “transferred” to surviving spouses who inherit the entire estate of the deceased spouse. Thus the surviving spouse could effectively have a R7m abatement upon his/her subsequent death.

Also, it is proposed that the usufruct valuation rules be amended to address perceived schemes using usufructs in favour of the surviving spouse. The valuation will now be based on the life expectancies of the beneficiaries.

Transfer Duty on Share Block shares

Proposal that the transfer of shares in Share Block companies should be subject to Transfer Duty.

Foreign dividend exemption – Dual-listed companies

There appears to be an intention to partially withdraw the current exemption, so that foreign dividends on uncertificated listed shares (which will now be subject to the 10% DT) might continue to be exempt from Normal Tax, whilst certificated listed shares will attract Normal Tax.

Other proposals

Mining stockpiles included as Trading Stock

Proposal to substantially expand the meaning of “trading stock” (s1 ITA) to also include inter alia mining stockpiles.

Domestic residences held through companies – Liquidation relief

Proposal to offer a temporary tax free or “roll-over” window for the transfer of domestic residences held in companies to their natural-person-shareholders. It is anticipated that the new Companies Act will make it more expensive for individuals to hold such (dormant) companies and thus increase the desire to liquidate them –hence the proposal to allow roll-over deferral upon liquidation.

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